

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BRYAN HOLT HENDERSON, :  
: Plaintiff,  
v. :  
: 09 Civ. 2634 (BSJ) (RLE)  
EL SOL CONTRACTING & CONSTRUCTION :  
CO. :  
: Opinion & Order  
Defendant. :  
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**BARBARA S. JONES**  
**UNITED STATES DISTRICT JUDGE**

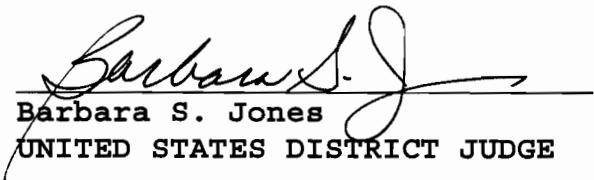
On September 17, 2009, Plaintiff moved for entry of a default judgment against Defendant. Pursuant to the Court's October 5, 2009 order, Thomas Hall filed a notice of appearance as counsel for Defendant and, on October 21, 2009, a cross-motion for an order pursuant to Fed. R. Civ. P. 55(c) and 60(b) setting aside Defendant's default in answering Plaintiff's complaint and allowing the nunc pro tunc service of Defendant's proposed answer.

Plaintiff's motion for entry of a default judgment against Defendant is DENIED. Defendant has explained to the Court's satisfaction that Defendant's delay in answering Plaintiff's complaint was inadvertent and not willful. Moreover, a decision on the merits is favored by the Court. See New York Typographical Union No. 6 v. AA Job Printing, 622 F. Supp. 566,

567 (S.D.N.Y. 1985) (citing Traguth v. Zuck, 710 F.2d 90, 94 (2d Cir. 1983)).

Defendant is ordered to file an answer to the complaint within three business days of the date of this order.

**SO ORDERED:**



Barbara S. Jones  
UNITED STATES DISTRICT JUDGE

Dated: New York, New York  
October 29, 2009